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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,818	06/07/2002	Hans Bruder	396/50809	2416

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EXAMINER

MACARTHUR, VICTOR L

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/030,818

Applicant(s)

BRUDER, HANS

Examiner

Victor MacArthur

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

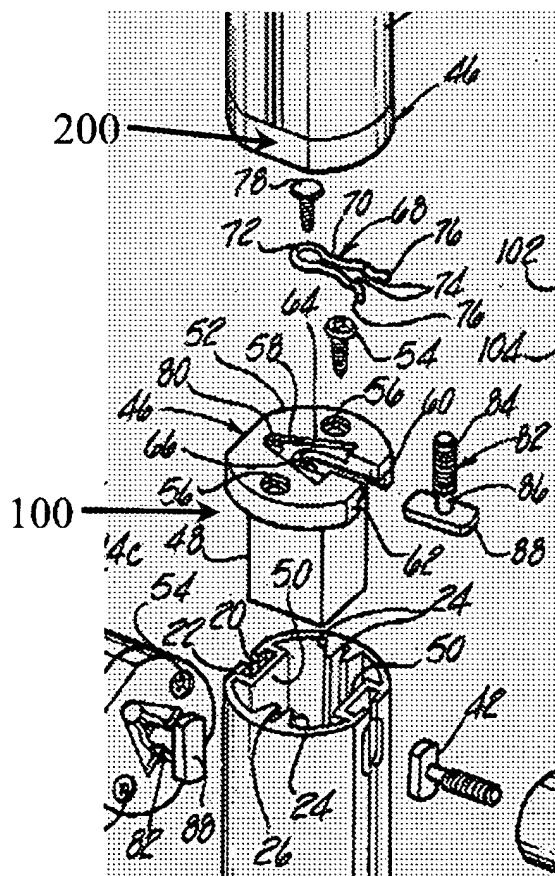
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DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4410157 to Monti (see marked-up fig.3 below).



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Claim 10. Monti discloses (fig.3) a supporting profile for erecting a structure, the supporting profile comprising: an elongated hollow body (14A) having first (top of 14A) and second (bottom of 14A) ends and a longitudinal groove (20) on the outside of the body; an adapter piece (100) inserted into and secured to the first end of the elongated body, the adapter piece having a receiving chamber (66); and a disk-shaped end piece (disc portion 200) disposed at the first end and connected (via 82) to the adapter piece, wherein the disk-shaped end piece is mounted (via 100) on a face (top face of 14A) of the hollow body and is fastened to the adapter piece by fasteners (68, 82, col.5, ll.20-26). The receiving chamber of Monti is fully capable of receiving a turnbuckle and thus meets the functional limitation “for receiving a turnbuckle”. It is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.* the functional limitation “for receiving a turnbuckle”, is given only limited patentable weight since it does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963).

Claim 11. Monti discloses that the end piece has a concave recess (64) adapted (via 82) to an external curvature of a round profile.

Claim 12. Monti discloses that the end piece has an opening (66). The Monti opening is fully capable of having a turnbuckle pass through and thus meets the functional limitation “for the turnbuckle to pass through”.

Claim 13. Monti discloses (fig.2) that the end piece has a joint (28) for connection to another profile (via 12).

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Claim 14. Monti discloses that the joint includes a first disk (32) which extends perpendicular to the end piece and has a center bore (receiving 34), and a second disk (30) having a center bore (receiving 34) and being connected with the first disk by means of a bolt (34) extending through the center bores and acting as an axis of rotation, the second disk having a fastening device (12) for connection to another profile.

Claim 15. Monti discloses that the second disk is connected (via 12) to another end piece.

Claim 16. Monti discloses that the second disk has a clamping part (36, 38) that is configured (via 36) for insertion into longitudinal grooves of another supporting profile.

Claim Rejections - 35 USC § 103

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4410157 to Monti in view of USPN 2538483 to Summers.

Claim 17. Monti does not disclose first and second hemispheres. Summers teaches (col.1, ll.40-50 and figs.1-4) a hemisphere (10) provided for the lateral covering of a disc (fig.2, at base of 15) wherein the hemisphere has a center bore (14) with a thread and, by means of this thread, is screwed onto a thread at the end of a bolt. Summers teaches (col.1, ll.1-5) that hemispheres are beneficial for the purpose of covering unsightly exposed ends of hardware. Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the bolt of Monti to receive hemispheres, as taught by Summers, for the purpose of covering unsightly exposed ends of hardware. The word "hemisphere" is

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taken by the examiner to mean “half of a roughly spherical body” in accordance with Merriam-Webster’s Collegiate Dictionary Tenth Edition.

Claim 18. Monti as modified by Summers suggests (Summers) that the hemispheres have a threaded center bore (14) and can be screwed onto a threaded end of a bolt.

Response to Arguments

Applicant's arguments filed on 1/30/2004 with regard to the claim rejections have been fully considered but they are not persuasive.

The applicant argues that the component (Top 52 [or 200 as it is referred to in the current office action]) belongs to profile (14B) and does not belong to profile (14A). This is not persuasive since the limitation “belongs to” is not recited in the claim language or the office action rejection. Rather, as claimed by the applicant, Monti discloses a disk-shaped end piece (disc portion 200 [Top 52 of the previous office action]) disposed at the first end (first end of 14A). The broadest reasonable interpretation of “disposed at” includes “being located near” and does not necessarily require “belonging to”.

The applicant argues, “neither the threaded bore 66 nor the recess 58 can be used to receive a turnbuckle, such as the turnbuckle 9 shown in Figure 1 of DE-U 29821204”. This is not persuasive since the limitation “the turnbuckle 9 shown in Figure 1 of DE-U 29821204” is not recited in the claim language. Rather, as claimed by the applicant, Monti discloses a receiving chamber that is fully capable of receiving a turnbuckle (any arbitrarily chosen turnbuckle) and thus meets the functional limitation “for receiving a turnbuckle”. Although the

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claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant argues that the element (top 52 [or element 200 as recited in the current office action]) is not mounted on a face of the hollow body (14A). It appears that the applicant assumes the limitation “mounted on” to necessarily require “direct contact between”. However, the broadest interpretation does not necessarily require this. For instance, a picture that is encased in a picture frame may be considered to be mounted on a wall even if the frame prevents direct contact between the picture and wall.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701.

The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



VLM

March 16, 2004



Lynne H. Browne
Supervisory Patent Examiner
Technology Center 3600